?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%Dated: 14.11.2018

RESERVED ON : 24.07.2018

DELIVERED ON : 14.11.2018

*CORAM

THE HON-BLE MR. JUSTICE M.V.MURALIDARAN

+C.R.P. (MD) (NPD) No.2029 of 2017
and
CMP(MD)No.10135 of 2017

#M.P.Subramaniam .. Petitioner

vs

$P.Thirumalaisamy .. Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 08.06.2017 passed in E.A.No.178 of 2014 in E.P.No.100 of 2011 in O.S.No.225 of 1999 on the file of the Sub~Court, Palani.
!For Petitioner:Mr.S.Devaraj

^For Respondent:Mr.T.Lenin Kumar

:ORDER
This Civil Revision Petition has been filed by the petitioner against the order dated 08.06.2017 made in E.A.No.178 of 2014 in E.P.No.100 of 2011 in O.S.No.225 of 1999 on the file of the learned Sub~Court, Palani. The petitioner is the judgment~debtor/defendant and the respondent is the decree~holder/plaintiff.

2. The respondent/plaintiff filed the suit against the petitioner/defendant for specific performance directing the petitioner to execute and register the sale deed for Rs.70,000/~ in favour of the respondent in respect of the suit property on receipt of the balance sale consideration of Rs.55,000/~ and also directing the petitioner to deliver peaceful possession of the suit property and if the petitioner fails to do so, the same to be done through Court.

3. The trial Court decreed the suit ex parte on 02.07.2002. Based on the ex parte decree, the plaintiff had filed E.P.No.100 of 2011 to execute the sale deed, wherein the petitioner/judgment~debtor remained ex parte and on 13.02.2012, the Court had executed the sale deed in favour of the

respondent/decree~holder.

4. Pursuant to the sale deed executed by the Court on behalf of the petitioner/judgment~debtor, the respondent had filed E.A.No.178 of 2014 seeking delivery of possession of the property.

5. Resisting E.A.No.178 of 2014, the petitioner had filed counter stating that he had filed petition to set aside the ex parte decree dated 02.7.2002 along with delay condonation petition and the same were numbered as I.A.Nos.476 and 477 of 2009 and also pending for consideration. Since the petitioner has got chance to set aside the ex parte decree, he prayed for dismissal of the petition.

6. Upon consideration of the rival submissions, the Executing Court allowed E.A.No.178 of 2014 and ordered delivery of the property. Assailing the same, the petitioner had filed the present revision.

7. Challenging the order of the Executing Court, the learned counsel for the petitioner/defendant submitted that the Executing Court committed a serious error in taking up E.A.No.178 of 2014 at the first instance especially when I.A.Nos.476 and 477 of 2009 were pending adjudication and when applications and proceeding regarding the suit were pending, it was not fair on the part of the Executing Court to take up E.A.No.178 of 2014 and pass orders. He would submit that the Executing Court ought to have seen that the claim for delivery by the respondent was not based on merit of the suit, but based on ex parte order. When the applications for setting aside the ex parte decree and delay condonation were prior in point of time, the Executing Court ought to have taken up E.A.No.178 of 2014 and passed orders. The learned counsel further submitted that the findings and conclusions of the Executing Court were discriminatory in nature, based on extraneous reasons and irrelevant consideration and prayed for setting aside the same.

8. Per contra, the learned counsel for the respondent submitted that the respondent was aged about 85 years and for the past 20 years, he was running from pillar to post to get redressed his grievance. He would submit that the petitioner is a chronic defaulter as in the suit, he remained absent for more than two years and therefore, he was set ex parte in the suit. After a lapse of 6 « years, the petitioner had filed application to set aside the ex parte decree with delay condonation petition. The learned counsel further submitted that when the respondent filed E.P.No.100 of 2011, the petitioner remained absent and the Court had executed the sale deed in favour of the respondent. After that the respondent waited for 4 years and then filed E.A.No.178 of 2014 for delivery of the property. The learned counsel submitted that since the petitioner had not filed any application challenging the order passed in E.P.No.100 of 2011, he had no right to oppose E.A.No.178 of 2014 and that the Executing Court right in ordering delivery of the property.

9. I heard Mr.S.Devaraj, learned counsel for the petitioner and Mr.T.Lenin Kumar, learned counsel for the respondent and also perused the materials available on record.

10. The main grievance of the petitioner is that when petition to set aside the ex parte decree and petition to condone the delay in filing petition to set aside the ex parte decree were pending for consideration, it is unfair on the part of the Executing Court in taking up E.A.No.178 of 2014 at the first instance and ordering delivery of the property and according to the petitioner, the findings of the Executing Court in the impugned order is discriminatory in nature.

11. The facts as could be seen from the typed set of papers reveal as follows: The petitioner is the owner of the suit property and on 22.4.1996, both the petitioner and the respondent had entered into a sale agreement in respect of the suit property. The sale consideration was fixed at Rs.70,000/~ and the respondent had paid Rs.10,000/~ as advance. On 04.6.1996, the petitioner received another sum of Rs.5,000/~ and made an endorsement to that effect. Since the petitioner did not come forward to act upon the agreement, after issuing notice, the respondent filed O.S.No.225 of 1999 seeking for specific performance.

12. In the suit, the petitioner had entered appearance. Since the petitioner had not filed the written statement despite several adjournments, he was called absent and set ex parte and ex parte decree was passed on 02.7.2002. In the year 2009 only, the petitioner filed I.A.Nos.476 and 477 of 2009 to set aside the ex parte decree along with delay condonation and the said petitions are still pending according to the petitioner.

13. Pursuant to the ex parte decree, the respondent filed E.P.No.100 of 2011 for execution of sale deed, wherein the petitioner remained ex parte and on 18.10.2011 an order to execute the sale deed in favour of the respondent has been passed. Accordingly, on 13.02.2012, the Court had executed and registered the sale deed in favour of the respondent. The said fact has not been denied by the petitioner.

14. It is pertinent to note that the petitioner had not obtained stay of execution of the decree from higher Court and also he had not taken steps to pursue applications I.A.Nos.476 and 477 of 2009 filed by him. The Executing Court cannot stay execution of its own decree. Since the respondent had not taken earnest steps to pursue I.A.Nos.476 and 477 of 2009, in order to execute the decree, the respondent had filed E.P.No.100 of 2011, wherein also the petitioner had not shown his interest in appearing and remained ex parte. After knowing the ex parte order in E.P.No.100 of 2011 also, the petitioner had not taken steps to set aside the said ex parte order passed in E.P.No.100 of 2011 or preferred any appeal and/or revision against the execution of the sale deed by the Court.

15. It appears that after waiting for more than 3 years, the respondent had filed E.A.No.178 of 2014 for delivery of the property and upon consideration of the petition and the counter only, the Executing Court ordered delivery of the property on 08.6.2017.

16. It also appears that on 09.6.2017, when the Court Amin went to the suit village and hand over possession of the property to the respondent, the

petitioner objected the same, which necessitated the respondent in filing E.A.Nos.124 and 125 of 2017 seeking for police protection and also to break open the door of the property. At this stage, the petitioner had filed the present revision. Though the petitioner contended that behind his back, the respondent had obtained ex parte decree and execution of the sale deed through Court, nothing has been produced to prove the same.

17. It is pertinent to note that the respondent is aged about 85 years and since 2002, he was running pillar to post. The petitioner stated to have filed petition to set aside the ex parte decree after a delay of 6 « years, however, he had not shown interest in perusing the same. The contention of the petitioner that he got fair chance of setting aside the ex parte decree cannot be gone into in this revision.

18. The decree dated 02.7.2002 having been executed by the Executing Court by execution of sale deed in favour of the respondent, the petitioner has no legal right to oppose delivery of the property transferred in his name and therefore, the Executing Court was right in ordering delivery of the property. No valid grounds have been made out to interfere with the order impugned and the Civil Revision Petition is liable to be dismissed.

19. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

To

The Sub Judge,
Palani.